ENABLING ACT FOR
NEW MEXICO
Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310

Sec. 2. Meeting of delegates; mandatory provisions of constitution.

The delegates to the convention thus elected shall meet in the hall of the house of representatives in the capital of the territory of New Mexico at twelve o'clock noon on the fourth Monday after their election, and they shall receive compensation for the period they actually are in session, but not for more than sixty days in all. After organization they shall declare on behalf of the people of said proposed state that they adopt the constitution of the United States, whereupon the said convention shall be, and is hereby, authorized to form a constitution and provide for a state government for said proposed state, all in the manner and under the conditions contained in this act. The constitution shall be republican in form and make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the constitution of the United States and the principles of the declaration of independence.

And said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said state:

A. that perfect toleration of religious sentiment shall be secured, and that no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship; and that polygamous or plural marriages, or polygamous cohabitation, and the sale, barter or giving of intoxicated liquors to Indians and the introduction of liquors into Indian country, which term shall also include all lands now owned or occupied by the Pueblo Indians of New Mexico, are forever prohibited;

B. that the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all land lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the congress of the United States; and the lands and the property belonging to citizens of the United States residing without the said state shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by the state upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said state from taxing, as other lands and other property are taxed, any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any act of congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said state so long and to such extent as congress has prescribed or may hereafter proscribe;

C. that the debts and liabilities of said territory of New Mexico and the debts of the counties thereof which shall be valid and subsisting at the time of the passage of this act shall be assumed and paid by said proposed state, and that said state shall, as to all such debts and liabilities, be subrogated to all the rights, including rights of indemnity and reimbursement, existing in favor of said territory or of any of the several counties thereof at the time of the passage of this act: provided, that nothing in this act shall be construed as validating or in any manner legalizing any territorial, county, or municipal or other bonds, obligations or evidences of indebtedness of said territory or the counties or municipalities thereof which now are or may be invalid or illegal at the time said proposed state is admitted, nor shall the legislature of said proposed state pass any law in any manner validating or legalizing the same;

D. that provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said state and free from sectarian control, and that said schools shall always be conducted in English;

E. that said state shall never enact any law restricting or abridging the right of suffrage on account of race, color or previous condition of servitude;

F. that the capital of said state shall, until changed by the electors voting at an election

provided for by the legislature of said state for that purpose, be at the city of Santa Fe, but no election shall be called or provided for prior to the thirty-first day of December, nineteen hundred and twenty-five;

G. that there be and are reserved to the United States, with full acquiescence of the state, all rights and powers for the carrying out of the provisions by the United States of the act of congress entitled "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and acts amendatory thereof or supplementary thereto, to the same extent as if said state had remained a territory;

H. that whenever thereafter any of the lands contained within Indian reservations or allotments in said proposed state shall be allotted, sold, reserved or otherwise disposed of, they shall be subject for a period of twenty-five years after such allotment, sale, reservation or other disposal to all the laws of the United States prohibiting the introduction of liquor into the Indian country; and the terms "Indian" and "Indian country" shall include the Pueblo Indians of New Mexico and the lands now owned or occupied by them;

I. that the state and its people consent to all and singular the provisions of this act concerning the lands hereby granted or confirmed to the state, the terms and conditions upon which said grants and confirmations are made and the means and manner of enforcing such terms and conditions, all in every respect and particular as in this act provided.

All of which ordinance described in this section shall, by proper reference, be made a part of any constitution that shall be formed hereunder, in such terms as shall positively preclude the making by any future constitutional amendment of any change or abrogation of the said ordinance in whole or in part without the consent of congress. (As amended August 21, 1911, 37 Stat. 42, J.R. No. 8.)

Cross-references. — See N.M. Const., art. XXI, §§ 1 to 10. As to amendment of compact with United States, see N.M. Const., art. XIX, § 4.

Compiler's note. — The Act of Aug. 21, 1911 deleted a requirement specifying proficiency in English as a qualification for all state officers and members of the state legislature.

Validity of conditions for statehood. — Conditions imposed by congress upon new states through their enabling acts are valid when they result from exercise of powers conferred upon federal government. United States v. Sandoval, 231 U.S. 28, 34 S. Ct. 1, 58 L. Ed. 107 (1913).

Enabling Act disclaimed state jurisdiction over Indians, and the state of New Mexico has declined to assume jurisdiction over the Indian reservations within the state by failing to take affirmative steps under congressional acts. Chino v. Chino, 90 N.M. 204, 561 P.2d 476 (1977).

Except where granted or sanctioned. — The terms upon which New Mexico was admitted as one of the states of the Union and N.M. Const., art. XXI, § 2 left no room for a claim by the state to governmental power over the Indians or Indian lands, except where such jurisdiction has been specifically granted by act of congress or sanctioned by decisions of the supreme court of the United States. Your Food Stores, Inc. v. Village of Espanola, 68 N.M. 327, 361 P.2d 950, cert. denied, 368 U.S. 915, 82 S. Ct. 194, 7 L. Ed. 2d 131 (1961).

But Navajo reservation is not completely separate entity existing outside of the political and governmental jurisdiction of New Mexico. The state has some jurisdiction, and there is not and never has been "exclusive federal authority." Montoya v. Bolack, 70 N.M. 196, 372 P.2d 387 (1962).

Pueblo Indians are under protection of United States, as dependent communities, and their lands and property are subject to congressional legislation. United States v. Candelaria, 271 U.S. 432, 46 S. Ct. 561, 70 L. Ed. 1023 (1926).

Liquor prohibition. — Congress is vested with plenary power to legislate as to the territories; its prohibition in Enabling Act of introduction of liquor into "Indian country" was valid. United States v. Sandoval, 231 U.S. 28, 34 S. Ct. 1, 58 L. Ed. 107 (1913).

Crimes by or against Indians. — There is nothing in this act which precludes jurisdiction of the United States over crimes committed by or against Indians in their pueblos, which are Indian lands under 25 U.S.C. § 217, United States v. Chavez, 290 U.S. 357, 54 S. Ct. 217, 78 L. Ed. 360 (1933).

Section 465 of the federal Indian Reservation Act did not bar application of nondiscriminatory state gross receipts tax to ski resort built by tribe on land not on the reservation, but leased from the federal government, but did preclude imposition of compensating use tax on personalty installed as permanent improvements in construction of the ski lifts. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S. Ct. 1267, 36 L. Ed. 2d 115 (1973), aff'g in part and rev'g in part 83 N.M. 158, 489 P.2d 666 (Ct. App. 1971).

Pueblo Indians are subject to road tax for the benefit of roads outside of their own lands. 1915-16 Op. Att'y Gen. 9.

State not obligated on claim. — Subsection C did not obligate state to pay claims against county for wild animal bounties, where under the law, no claim existed against county until county commissioners had levied and collected a tax for its payment. State ex rel. Beach v. Board of Loan Comm'rs, 19 N.M. 266, 142 P. 152, rehearing denied, 19 N.M. 277 (1914).

Bond issue unconstitutional. — Laws 1921, ch. 6, inasmuch as it permitted state board of loan commissioners to issue state bonds for purpose of reimbursing town and counties for principal and interest upon railroad aid bonds previously issued and validated by congress, was unconstitutional, for it allowed a diversion from original objects of proceeds from lands granted by congress. Act June 5, 1920 (41 Stat. 947) gives consent to such diversion, but a constitutional amendment must be enacted before the same can be effected. Byrant v. Board of Loan Comm'rs, 28 N.M. 319, 211 P. 597 (1922).

State legislature was without power to reimburse two counties and a town for moneys paid on bonds which

they had issued, because the act, in violation of the state constitution, authorized a diversion of proceeds of lands granted by Enabling Act from the objects stated in that act, after the state had accepted terms and conditions of grant by its constitution. Bryant v. Board of Loan Comm'rs, 28 N.M. 319, 211 P. 597 (1922).

Teaching religion in public schools. — Teachers in public schools must not dress in religious garb or wear religious emblems while in discharge of their duties, must refrain from teaching sectarian religion and doctrines and dissemination of religious literature during such time and must be under actual control and supervision of responsible school authorities. Zellers v. Huff, 55 N.M. 501, 236 P.2d 949 (1951).

Sec. 6. School and lieu lands; lands in national forests.

In addition to sections sixteen and thirty-six, heretofore granted to the territory of New Mexico, section two and thirty-two in every township in said proposed state not otherwise appropriated at the date of the passage of this act are hereby granted to the said state for the support of common schools; and where sections two, sixteen, thirty-two and thirty-six, or any parts thereof, are mineral, or have been sold, reserved or otherwise appropriated or reserved by or under the authority of any act of congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made heretofore or hereafter, and before the survey thereof in the field, the provisions of Sections Twenty-Two Hundred and Seventy-Five and Twenty-Two Hundred and Seventy-Six of the Revised Statutes are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections two and thirty-two, as well as section sixteen and thirty-six, were mentioned therein: provided, however, that the area of such indemnity selections on account of any fractional township shall not in any event exceed an area which, when added to the area of the above-named sections returned by the survey as in place, will equal four sections for fractional townships containing seventeen thousand two hundred and eighty acres or more, three sections for such townships containing eleven thousand five hundred and twenty acres or more, two sections for such townships containing five thousand seven hundred and sixty acres or more, nor one section for such township containing six hundred and forty acres or more: and provided further, that the grants of sections two, sixteen, thirty-two and thirty-six to said state, within national forests now existing or proclaimed, shall not vest the title to said sections in said state until the part of said national forests embracing any of said sections is restored to the public domain; but said granted section shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the secretary of the treasury to the state, as income for its common school fund, such proportion of the gross proceeds of all the national forests within said state as the area of lands hereby granted to said state for school purposes which are situate within said forest reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of all the national forests within said state, and the area of said sections when unsurveyed to be determined by the secretary of the interior, by protraction or otherwise, the amount necessary for such payments being appropriated and made available annually from any money in the treasury not otherwise appropriated.

Cross-references. — See compiler's note to Sec. 10 or the Enabling Act.

Act a present grant. — This act operates as a present grant to state of school sections, subject only to the identification by survey, when title vested. As soon as the lands are surveyed, the state acquires an interest and it may take possession and lease to private persons. Dallas v. Swigart, 24, N.M. 1, 172 P. 416 (1918).

Survey completes passage of title. — Enabling Act, construed as a statute, evinces an intention on part of congress to pass immediate title to state to school sections, subject only to identification by survey, and when school sections were surveyed in the field, all obstacles to rights of state were removed, and no third persons could acquire any interest in the sections. Dallas v. Swigart, 24 N.M. 1, 172 P. 416 (1918).

The language of this section: "are hereby granted to the said state for the support of common schools" created a grant in praesenti, and title to surveyed school land immediately became vested in state; title to unsurveyed land would attach at time the land was sufficiently identified by survey under provisions of statute. United States ex rel. New Mexico v. Ickes, 63 App. D.C. 278, 72 F.2d 71 (D.C. Cir.), cert. denied, 293 U.S. 596, 55 S. Ct. 111, 79 L. Ed. 689 (1934).

Survey must be completed and approved by

secretary of interior, before title of state attaches or becomes vested. United States ex rel. New Mexico v. Ickes, 63 App. D.C. 278, 72 F.2d 71 (D.C. Cir.), cert. denied, 293 U.S. 596, 55 S. Ct. 111, 79 L. Ed. 689 (1934).

Alienation authorized. — Land commissioner has power to alienate particular public lands held in trust for public schools; but no right to such lands can be acquired by circumvention or any indirect method. In re Dasburg, 45 N.M. 184, 113 P.2d 569(1941).

Reservation of mineral rights. — State, through its land commissioner, properly reserved minerals and mineral rights in selling and in issuing its patent to school and asylum lands granted to it by the federal government, and patentee was not entitled to ejectment against state's lessee of oil and gas rights. Terry v. Midwest Refining Co., 64 F.2d 428 (10th Cir.), cert. denied, 290 U.S. 660, 54 S. Ct. 74, 78 L. Ed. 571 (1933).

Indemnity land. — Land officers may waive or surrender a titled tract in the reservation, and may select and take in lieu of it a tract of like area from the unappropriated nonmineral public lands outside the reservation. Acceptance of such a proposal, and compliance with its terms, confers a vested right in the selected land which they cannot lawfully cancel or disregard. Payne v. New Mexico, 255 U.S. 367, 41 S. Ct. 333, 65 L. Ed. 680 (1921).

Sec. 7. University and internal improvement land grants; school fund.

In lieu of the grant of land for purposes of internal improvements made to new states by the Eighth Section of the Act of September fourth, eighteen hundred and forty-one, and in lieu of the swampland grant made by the Act of September twenty-eighth, eighteen hundred and fifty, and Section Twenty-Four Hundred and Seventy-Nine of the Revised Statutes, and it lieu of the grant of thirty thousand acres for each senator and representative in congress, made by the Act of July second, eighteen hundred and sixty-two, Twelfth Statutes at Large, page five hundred and three, which grants are hereby declared not to extend to the said state, and in lieu of the grant of saline lands heretofore made to the territory of New Mexico for university purposes by Section Three of the Act of June twenty-first, eighteen hundred and ninety-eight, which is hereby repealed, except to the extent of such approved selections of such saline lands as may have been made by said territory prior to the passage of this act, the following grants of lands are hereby made, to wit:

for university purposes, two hundred thousand acres; for legislative, executive and judicial public buildings heretofore erected in said territory or to be hereafter erected in the proposed state, and for the payment of the bonds heretofore or hereafter issued therefor, one hundred thousand acres; for insane asylums, one hundred thousand acres; for penitentiaries, one hundred thousand acres; for schools and asylums for the deaf, dumb and the blind, one hundred thousand acres; for miners' hospitals for disabled miners, fifty thousand acres; for normal schools, two hundred thousand acres; for state charitable, penal and reformatory institutions, one hundred thousand acres; for agricultural and mechanical colleges, one hundred and fifty thousand acres; and the national appropriation heretofore annually paid for the agricultural and mechanical college to said territory shall, until further order of congress, continue to be paid to said state for the use of said institutions; for school of mines, one hundred and fifty thousand acres; for military institutes, one hundred thousand acres; and for the payment of the bonds and accrued interest thereon issued by Grant and Santa Fe counties, New Mexico, which said bonds were validated, approved and confirmed by Act of congress of January sixteenth, eighteen hundred and ninety-seven (Twenty-Ninth Statutes, page four hundred and eighty-seven), one million acres: provided, that if there shall remain any of the one million acres of land so granted, or of the proceeds of the sale or lease thereof, or rents, issues or profits therefrom, after the payment of said debts, such remainder of lands and the proceeds of sales thereof shall be added to and become a part of the permanent school fund of said state, the income therefrom only to be used for the maintenance of the common schools of said state.

Cross-reference. — For acceptance and use of Enabling Act educational grants, see N.M. Const., art. XII, § 12.

Proceeds to be kept in fund. — Enabling Act

requires that all moneys derived from lands granted to agricultural college (now New Mexico state university), except ordinary rentals, be kept in a permanent fund; only interest thereon can be appropriated for current use. State v. Llewellyn, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917).

Ferguson Act (30 Stat. 484) and Enabling Act are in pari materia; they must be read and construed together to determine the policy of congress. When so read, a state's compact with the United States requires proceeds of sales of university lands, and of natural products thereof, such as oil royalties, to be accumulated in a permanent fund of the university and income used only for current income. Regents of Univ. of N.M. v. Graham, 33 N.M. 214, 264 P. 953 (1928).

Publicity expenditures invalid. — Act authorizing commissioner of public lands to expend annually three cents on the dollar of annual income from sales and leases for publicity purposes is, in its application to proceeds of trust lands, invalid. United States v. Ervien, 246 F. 277, 159 C.C.A. 7 (8th Cir. 1917), aff'd, 251 U.S. 41, 40 S. Ct. 75, 64 L. Ed. 128 (1919).

Mineral reservation authorized. — State, through commissioner of public lands, properly reserved minerals and mineral rights in selling, and in issuing its patent to, school and asylum lands granted to it by the government, and patentee was not entitled to ejectment against state's lessee of oil and gas rights. Terry v. Midwest Refining Co., 64 F. 2d 428, cert. denied, 290 U.S. 660, 54 S. Ct. 74, 78 L. Ed. 571 (1933).

Bonds of university, when issued, are valid obligations of it, and not of state. State v. Regents of Univ. of N.M., 32 N.M. 428, 258 P. 571 (1927).

Girls' welfare home is not entitled to proceeds from lands set aside for state penal, charitable and reformatory institutions without further legislation. 1929-30 Op. Att'y Gen. 69.

Sec. 8. Land grant schools under control of state; aid to sectarian schools prohibited.

The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said state, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college or university.

Sec. 9. Common school fund.

Five per centum of the proceeds of sales of public lands lying within said state, which shall be sold by the United States subsequent to the admission of said state into the union, after deducting all the expenses incident to such sales, shall be paid to the said state to be used as a permanent inviolable fund, the interest of which only shall be expended for the support of the common schools within said state.

Sec. 10. Grants of public lands held in trust; sale or lease; price; restrictions; water power reservations; lieu sections; national forests.

It is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust; provided, however, that the state of New Mexico, through proper legislation, may provide for the payment, out of the income from the lands herein granted, which land may be included in a drainage district, of such assessments as have been duly and regularly established against any such lands in properly organized drainage districts under the general drainage laws of said state.

No mortgage or other encumbrance of said lands, or any thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of a county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time and place of the transaction to be had, with a full description of the lands to be offered, and be

published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of such lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner and after the notice by publication thus provided for sales and leases of the lands themselves: provided, that nothing herein contained shall prevent said proposed state from leasing any of said lands referred to in this section for a term of five years or less without said advertisement herein required.

All lands, leaseholds, timber and other products of land before being offered shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor in any case less than the minimum price hereinafter fixed, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid.

Lands east of the line between ranges eighteen and nineteen east of the New Mexico principal meridian shall not be sold for less than five dollars [($5.00)] per acre, and lands west of said line shall not be sold for less than three dollars [($3.00)] per acre, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars [($25.00)] per acre: provided, that said state, at the request of the secretary of the interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such government project. And other lands in lieu thereof are hereby granted to said state, to be selected from lands of the character named and in the manner prescribed in Section Eleven of this act.

There is hereby reserved to the United States and exempted from the operation of any and all grants made or confirmed by this act to said proposed state all land actually or prospectively valuable for the development of water powers or power for hydroelectric use or transmission and which shall be ascertained and designated by the secretary of the interior within five years after the proclamation of the president declaring the admission of the state; and no lands so reserved and excepted shall be subject to any disposition whatsoever by said state, and any conveyance or transfer of such lands by said state or any officer thereof shall be absolutely null and void within the period above named; and in lieu of the land so reserved to the United States and excepted from the operation of any of said grants, there [shall] be, and is hereby, granted to the proposed state an equal quantity of land to be selected from land of the character named and in the manner prescribed in Section Eleven of this act.

A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys were by this Act conveyed or confirmed. No moneys shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed. The state treasurer shall keep all such moneys invested in safe, interest-bearing securities, which securities shall be approved by the governor and secretary of state of said proposed State, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto, as defined by this Act and the laws of the State not in conflict herewith.

Every sale, lease, conveyance or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provision of the constitution or laws of the said state to the contrary notwithstanding.

It shall be the duty of the attorney general of the United States to prosecute in the name of the United States and its courts such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

Nothing herein contained shall be taken as in limitation of the power of the state or of any citizen thereof to enforce the provisions of this act; provided, that the secretary of the interior is hereby authorized in his discretion to accept on behalf of the United States, title to any land within the exterior boundaries of the national forests in the state of New Mexico, title to which is in the state of New Mexico, which the said state of New Mexico is willing to convey to the United States, and which shall be co conveyed by deed duly recorded and executed by the governor of said state and the state land

commissioner, with the approval of the state land board of said state, and as to land granted to the said state of New Mexico for the support of common schools with the approval of the state superintendent of public instruction of said state, as to institutional grant lands with the approval of the governing body of the institution for whose benefit the lands so reconveyed were granted to said state, if, in the opinion of the secretary of agriculture, public interests will be benefitted thereby and the lands are chiefly valuable for national forest purposes, and in exchange therefor, the secretary of the interior, in his discretion, may give not to exceed an equal value of unappropriated, ungranted, national forest or other government land belonging to the United States within the said state of New Mexico, as may be determined by the secretary of agriculture and be acceptable to the state as a fair compensation, consideration being given to any reservation which either the state or the United States may make of timber, mineral or easements.

Authority is hereby vested in the president temporarily to withdraw from disposition under the Act of June 25, 1910 (Thirty-Sixth Statutes at Large, page 847), as amended by the act of August 24, 1912 (Thirty-Seventh Statutes at Large, page 497), lands proposed for selection by the state under the provisions of this act. (As amended April 1, 1926, 44 Stat. 228, ch. 96; June 15, 1926, 44 Stat. 746, ch. 590, 1; August 28, 1957, 71 Stat. 457, Pub. L. 85-180.)

I. GENERAL CONSIDERATION.

Cross-reference. **—** For waiver of restrictions, see N.M. Const., art. XIII, § 3.

Compiler's notes. **—** The Act of Aug. 28, 1957 deleted the seventh paragraph which read: "A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys were by this act conveyed or confirmed. No moneys shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed. The state treasurer shall keep all such moneys invested in safe interest-bearing securities, which securities shall be approved by the governor and secretary of state of said proposed state, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto as defined by this act and the laws of the state not in conflict herewith."

Act of June 15, 1926, 44 Stat. 746, ch. 590 contained the following additional sections:

"Sec. 2. Where sections 2, 16, 32, and 36, within national forests, legal title to which sections is retained in the United States under the provisions of section 6 of the said Act of June 20, 1910, and which sections are administered as a part of the said national forests for the benefit of the said state of New Mexico, have not already been tendered as base for indemnity selection under sections 2275 and 2276, United States Revised Statutes, and where such sections of land, in the opinion of the secretary of agriculture, are chiefly valuable for forest purposes, upon surrender by the state of New Mexico of the right to make lieu selections and of all claim, right, or interest in or to said sections upon and in the event of elimination from the national forests, the secretary of the interior, in consideration of such surrender, may, in his discretion, give to the state of New Mexico not to exceed an equal value of unappropriated, ungranted, national forest or other government land belonging to the United States within the said state of New Mexico, as may be determined by the secretary of agriculture and be acceptable to the state as a fair compensation, consideration being given to any reservation which either the state or the United States may make of timber, mineral, or easements.

"That the secretary of agriculture may establish regulations and a procedure for appraising the values of the lands owned by the United States and by the state and for carrying out the provisions of this act.

"Sec. 3. That all lands acquired by the state of New Mexico under the provisions, and all the products and proceeds of said lands, shall be subject to all the conditions and trusts to which the lands conveyed or surrendered in lieu thereof are now subject. All lands conveyed to the United States under this act shall, upon acceptance of title, become parts of the national forests within which they are situated.

"Sec. 4. That pursuant to section 10, article XXI, Constitution of the state of New Mexico, the consent of the United States is hereby granted for amendment of the Constitution of the state of New Mexico in accordance with the provision of this act." Also see N.M. Const., art. XIII, § 3.

The restrictions of this section as to issuance of a patent to a portion of a tract of land sold under contract when only that part covered by the patent had been paid for and the balance due under the contract had not been paid at the time the patent was issued were waived as to patents issued prior to September 4, 1956 by Act of May 27, 1961, 74 Stat. 85, P.L. 87-40.

Section became part of fundamental law to same extent as if it had been directly incorporated into the constitution when expressly consented to by the state and its people in N.M. Const., art. XXI, § 9. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Authority of commissioner. — Under Enabling Act, constitution and statutes based thereon, commissioner of public lands has complete dominion over state lands. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945).

And limitations thereon. — Land commissioner's dominion over state lands is subject to restrictions imposed by Enabling Act, constitution and statutes, and the manner of its exercise is subject to judicial review. State ex rel. Del Curto v. District Court, 51 N.M. 297, 183 P.2d 607 (1947); Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945), criticized, state ex rel. Swayze v. District Court, 57 N.M. 266, 258 P.2d 377 (1953).

In selling lands belonging to the state and issuing patents therefor, the commissioner of public lands is merely an agent of the state and has those powers, and only powers, given by law. Zinn v. Hampson, 61 N.M. 407, 301 P.2d 518 (1956).

Term "securities," as used in the constitution and the Enabling Act, is used in its technical sense, in which it applies to obligations such as a mortgage or pledge, given by a debtor in order to make sure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation. In this technical sense, the term refers to interest-bearing obligations which are more than mere naked promises of liability by the debtor. 1957-58 Op. Att'y Gen. No. 57-279. (Opinion rendered prior to deletion of paragraph in this section relating to proper investment of proceeds from grant lands; see compiler's note above.)

Statute not applicable. — Territorial statute declaring all public lands common pastures necessarily referred to common use of public domain and had no application to lands selected by state under congressional grant where there were no public lands in territory, other than federal land, at time statute was passed. Makemson v. Dillon, 24 N.M. 302, 171 P. 673 (1918).

Drainage Act, as applicable to state lands contravened this section as ratified and accepted by state constitution. Lake Arthur Drainage Dist. v. Field, 27 N.M. 183, 199 P. 112 (1921). But see Lake Arthur Drainage Dist. v. Board of Comm'rs, 29 N.M. 219, 222 P. 389 (1924), approving special assessment against county for benefits to highways.

Comparison with Arizona act. **—** Although the Arizona and New Mexico Enabling Acts were in part combined, there have been substantial changes in the Arizona Act since the passage of the combined act. The new Mexico Enabling Act, on the other hand, has not been changed in this respect, and its Section 10 is entirely different from Section 28 of the Arizona act. United States v. 41,098,98 Acres of Land, More or Less, 548 F.2d 911 (10th Cir. 1977).

II. LAND, PROCEEDS IN TRUST.

Trust created in Enabling Act is binding and enforceable and the legislature is without power to divert the fund for another purpose than that expressed. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Interest on deposits derived directly or indirectly from schools or institutional lands belong to the fund or institution whose property produces it. 1923-24 Op. Att'y Gen. 151.

Authorized uses of funds. — Proceeds of lands granted by this act constitute permanent funds and may be used for support of state institutions. State v. Llewellyn, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed 538 (1917).

Since bonds of university of New Mexico, when issued, are valid obligations of university and not of state, use of income from granted lands to pay interest and provide a sinking fund does not violate this section. State v. Regents of Univ. of N.M., 32 N.M. 428, 258 P. 571 (1927).

Oil royalties derived from lands originally granted to territory by Ferguson Act (30 Stat. 484), and confirmed by this section, are a part of the permanent funds of the university of New Mexico, and only the income therefrom can be used for current income for that institution. Regents of Univ. of N.M. v. Graham, 33 N.M. 214, 264 P. 953 (1928).

In state statute creating state land office, provisions constituting 20% of income from state lands as a trust fund, known as the state lands maintenance fund, and authorizing payment of salaries and expenses of state land office from such fund did not violate trust created by Enabling Act. United States v. Swope, 16 F.2d 215 (8th Cir. 1926).

Appropriation of proceeds of lands for investigations as to irrigation and reclamation is valid. State ex rel. Yeo v. Uliarri, 34 N.M. 184, 279 P. 509 (1929).

Prohibited uses. — Use of funds from granted lands for advertising resources and advantages of state would be a breach of trust, and state land commissioner was enjoined from so using them. Ervien v. United States, 251 U.S. 41, 40 S. Ct. 75, 64 L. Ed. 128 (1919).

Funds derived from sources other than appropriations made by the legislature for the school for the deaf are beyond the control of the board of educational finance or the legislature itself and no deduction can be made by the new board from these funds for their administrative expenses. 1951-52 Op. Att'y Gen. No. 5468.

Irrigation district has no clear legal right to draw on income from land grant by congress, the use of which was limited to establishment of reservoirs and hydraulic engineering, and mandamus directed to the drawing of warrant thereon will be denied. Carson Reclamation Dist. v. Vigil, 31 N.M. 402, 246 P. 907 (1926).

No restrictions, in terms, on class of interest-bearing securities in which funds may be invested were imposed by this section, the only restriction in this regard being that they be "safe." The supervising control over the investment, conferred upon the governor and secretary of state by this act, would seem to vest in them power to exclude any given class of securities which might, in their judgment, be deemed unsafe. State v. Marron, 18 N.M. 426, 137 P. 845, 50 L.R.A. (n.s.) 274 (1913) (case decided under former paragraph relating to proper investment of proceeds from grant lands; see compiler's note above).

Municipal revenue bonds are not permissible investment under this section. 1957-58 Op. Att'y Gen. No. 58-207. (Opinion rendered prior to deletion of paragraph in this section relating to proper investment of proceeds from grant lands; see compiler's note above.)

III. ENCUMBRANCE, SALE AND LEASE.

Pledging of proceeds. — This section does not prohibit pledging of proceeds of sale and leasing of lands, donated to New Mexico in trust by act May 28, 1928, ch. 812, 45 Stat. 775, for purpose of retiring debentures issued to liquidate debts due certain counties and towns for previously paid bond principal and interest. State v. State Bd. Of Fin., 34 N.M. 394, 281 P. 456 (1929).

Proposed debentures in Laws 1921, ch. 81 do not come under the prohibition of this section, as it does not prohibit pledging the proceeds from the sale of lands. 1921-22 Op. Att'y Gen. 59.

Assignment of state grazing lease as collateral security does not violate this section. American Mtg. Co. v. White, 34 N.M. 602, 287 P. 702 (1930).

Where grazing lease executed by land commissioner was assigned by lessee as security for debt and commissioner approved the assignment, lien of creditor attached to any renewal of lease regardless of whether lessee had any legal right to renewal. Scharbauer v. Graham, 37 N.M. 449, 24 P.2d 288 (1933).

Alienation of public lands. — Lands transferred and confirmed to territory by this section were hedged about with the strictest precautions as to alienation, in the interest of the trust they were intended to serve. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Right to dispose of mineral land is not restricted, except as to manner of advertising and sale (assuming minerals to be included within meaning of "natural products"). The prohibition against sale of mineral lands is statutory. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Timber land. — Congressional and state legislation imposed no restrictions or limitations upon the sale of timber land different from the sale of any other state lands. 1915-16 Op. Att'y Gen. 283.

Reservation authorized. — Under Enabling Act, constitution and statutes, commissioner of public lands may sell or hold state lands at his discretion and may reserve the minerals to the fund or institution to which the land belongs, when making a sale thereof. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

State, through commissioner of public lands, properly reserved minerals and mineral rights in selling, and in issuing its patent to, school and asylum lands granted to it by the government, and patentee was not entitled to ejectment against state's lessee of oil and gas rights. Terry v. Midwest Refining Co., 64 F. 2d 428 (10th Cir.), cert. denied, 290 U.S. 660, 54 S. Ct. 74, 78 L. Ed. 571 (1933).

Advertising and public sale. — A lease of saline lands by the land commissioner can be made only after advertisement and public sale. 1923-24 Op. Att'y Gen. 1.

Right of renewal invalid. — No statute can grant an absolute right of renewal of a five-year lease under any terms or conditions, for it would violate the Enabling Act. State ex rel. McElroy v. Vesely, 40 N.M. 19, 52 P.2d 1090 (1935).

In view of this section, there can be no absolute right to renew a state land lease. Ellison v. Ellison, 48 N.M. 80, 146 P.2d 173 (1944).

Bidding requirements violated. — The practice of allowing the relinquishment of a lessee's existing leases on grazing or agricultural lands subject to the Enabling Act, and application for a new consolidated lease, having the net result of a lease or more than five years' duration without the opportunity for competitive bidding or adverse applications as provided by law, is beyond the discretion of the commissioner of public lands. 1969 Op. Att'y Gen. No. 69-67.

Provisions requiring advertising sale of granted lands and natural products thereof, as well as leases for more than a certain period, do not apply to right-of-way easements for state highways or for the taking of sand and gravel to be used in highway construction upon such land. State ex rel. State Hwy. Comm'n v. Walker, 61 N.M. 374, 301 P.2d 317 (1956).

Patents withheld until full payment. — There is no specific authority given the commissioner of public lands to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued. Zinn v. Hampson, 61 N.M. 407, 301 P.2d 518 (1956).

Where pursuant to this section of a tract of public land was sold by a 30-year purchase contract, after which sale, but before full payment, various assignments and parceling occurred, the state could honor the assignment of the purchase contract and the assignee of vendee's interest in 10 parcels for which it had paid could have equitable title thereto, but it could not receive patents for the parcels until the contract was fully and completely performed. 1957-58 Op. Att'y Gen. No. 58-206.

Rental price not restricted. — Where a statute required leasing of state lands at 2% of their appraised value, it was erroneous to assume that the minimum rental must be 2% of the $5.00 per acre minimum sale price set by congress in the Enabling Act, as the appraised value might be less than the purchase price prescribed. Makemson v. Dillon, 24 N.M. 302, 171 P. 673 (1918).

Commissioner of public lands could charge state for rights-of-way or easements for state highways across lands which were granted and confirmed to the state of New Mexico in trust for various state institutions and agencies by the Enabling Act when New Mexico was admitted to statehood and for sand and gravel removed from such lands for the use solely in constructing public highways across the trust lands. State ex rel. Sate Hwy. Comm'n v. Walker, 61 N.M. 374, 301 P.2d 317 (1956).

The general law that an agency of the state is not to be charged for the use of state property unless specific provision be made therefor is not applicable when dealing with lands granted in trust by the United States, under restrictions so exact they permit no license of construction or liberties of inference. State ex rel. State Hwy. Comm'n v. Walker, 61 N.M. 374, 301 P.2d 317 (1956).

Well and pump development not reclamation project. — The development of water and its application to land by means of wells and pumps cannot properly be considered as a project for the reclamation of lands, and state land irrigable in such manner is not subject to the restriction of being sold at not less than $25 per acre. 1914 Op. Att'y Gen. 143.

Mineral lease not intended. — Provisions of Enabling Act with reference to sale and leasing of granted lands do not embrace a lease for mineral purposes, and it follows that the state is not controlled nor restricted by said act in regard to leasing such lands for mineral purposes. Neel v. Barker, 27 N.M. 605, 204 P. 205 (1922).

Oil and gas exploration. — Restrictions of Enabling Act in regard to alienation of granted lands, or the use thereof, or the natural products thereof, do not apply to grant or lease to explore for oil and gas executed by commissioner of public lands. Neel v. Barker, 27 N.M. 605, 204 P. 205 (1922).

A lease executed by the commissioner of public lands to explore on public lands for oil and gas is not affected by the terms of this act. 1925-26 Op. Att'y Gen. 43.

IV. ENFORCEMENT.

Remedy exclusive. — The phrase, "it shall be the duty of the attorney general" indicates that proceedings brought by the attorney general are the exclusive remedy under this act. A collateral attack in condemnation proceedings on grazing lessees' ownership does not properly raise an issue, and the leases must be considered valid in the absence of special proceedings against the state by the attorney general brought under the Enabling Act. United States v. 41,098, 98 Acres of Land, More or Less, 548 F.2d 911 (10th Cir. 1977).

Citizens may not enjoin governor and other state officers from expending public fund on ground that statute authorizing such expenditure violates trust conditions of land grant funds, it having been made duty of the United States attorney general to enforce the trust conditions. Asplund v.

Hannett, 31 N.M. 641, 249 P. 1074, 58 A.L.R. 573 (1926).

Neither this section, nor N.M. Const., art XXI § 9, gives a citizen taxpayer the right to enjoin governor and state officers from making expenditures from "permanent reservoirs for irrigating purposes, income fund," upon ground of trust violation. Asplund v. Hannett, 31 N.M. 641, 249 P. 1074, 58 A.L.R. 573 (1926).

Neither constitution nor Enabling Act gives citizen-taxpayer the right to enjoin governor and state officers from making expenditures from "permanent reservoirs for irrigating purposes, income fund," upon ground of trust violation. Asplund v. Hannett, 31 N.M. 641, 249 P. 1074, 58 A.L.R. 573 (1926).

State does not hold granted lands and proceeds in trust, but by contract. A private citizen cannot sue to control disposition of fund, the United States alone being entitled to sue. Downer v. Graham, 21 F.2d 732 (8th Cir. 1927).

Mandamus. — State treasurer must invest school funds in safe, interest-bearing securities, and he may be compelled to do so by mandamus. State v. Marron, 18 N.M. 426, 137 P. 845, 50 L.R.A. (n.s.) 274 (1913).

Mandamus on relation of the commissioner of public lands lay to prevent use, pursuant to statute, of funds from lands granted under the Enabling Act for general governmental purposes. State ex rel. Shepard v. Mechem, 56 N.M. 762, 250 P.2d 897 (1952).

Sec. 11. Selection of lands by state; surveys.

All lands granted in quantity or as indemnity by this act shall be selected, under the direction and subject to the approval of the secretary of the interior, from the surveyed, unreserved, unappropriated and nonmineral public lands of the United States within the limits of said state, by a commission composed of the governor, surveyor general or other officer exercising the functions of a surveyor general, and the attorney general of the said state; and after its admission into the union said state may procure public lands of the United States within its boundaries to be surveyed with a view to satisfying any public land grants made to said state in the same manner prescribed for the procurement of such surveys by Washington, Idaho and other states by the act of congress approved August eighteenth, eighteen hundred an ninety-four (Twenty-Eighth Statutes at Large, page three hundred and ninety-four), and the provisions of said act, insofar as they related to such surveys and the preference right of selection, are hereby extended to the said state of New Mexico. The fees to be paid to the register and receiver for each final location or selection of one hundred and sixty acres made hereunder shall be one dollar [($1.00)].

Words "subject to the approval" of secretary of interior do not give him the right arbitrarily to refuse a selection, but mean that he shall determine after investigation. Makemson v. Dillon, 24 N.M. 302, 171 P. 673 (1918).

Cancellation of selection not authorized. — State's lien land selection, made after national forest was created surrounding base land, could not be canceled by interior department when boundaries of forest were changed so that base land was no longer surrounded thereby even though department had not yet taken final action on the exchange. Lane v. New Mexico, 49 App. D.C. 80, 258 F. 980 (D.C. Cir. 1919), aff'd, 255 U.S. 367, 41 S. Ct. 333, 65 L. Ed 680 (1921).

Vesting of title in school land was dependent upon survey, and notwithstanding language of act "survey in the field," it must be interpreted as a completed survey finally approved by the secretary of the interior, United States ex rel. New Mexico v. Ickes, 63 App. D.C. 278, 72 F.2d 71 (D.C. Cir.), cert. denied, 293 U.S. 596, 55 S. Ct. 111 79 L. Ed. 689 (1934).

Sec. 12. Confirmation of grants previously made to New Mexico territory.

All grants of lands heretofore made by any act of congress to said territory, except to the extent modified or repealed by this act, are hereby ratified and confirmed to said state, subject to the provisions of this act: provided, however, that nothing in this act contained shall, directly or indirectly, affect any litigation now pending and to which the United States is a party, or any right or claim therein asserted.

Sec. 18. Saline lands; reservation.

All saline lands in the proposed state of New Mexico are hereby reserved from entry, location, selection or settlement until such time as congress shall hereafter provide for their disposition.